No. 77-142

In the Supreme Court of the United States

OCTOBER TERM, 1977

UNITED STATES OF AMERICA, PETITIONER

v.

DONALD LAVERN CULBERT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 548 F.2d 1355.

JURISDICTION

The judgment of the court of appeals (Pet. App. B) was entered on February 23, 1977. A timely petition for rehearing and suggestion for rehearing *en banc* was denied on May 27, 1977 (Pet. App. C). On June 20, 1977, Mr. Justice Rehnquist extended the time for filing a petition for a writ of certiorari to and including July 26, 1977, and the petition was

filed on that date. The petition for a writ of certiorari was granted on October 3, 1977 (A. 7). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether conduct within the plain language of the Hobbs Act (18 U.S.C. 1951) is nonetheless not proscribed by that Act unless it is also proven to constitute "racketeering."

STATUTE INVOLVED

The Hobbs Act, 18 U.S.C. 1951, provides in pertinent part:

> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.
>
> (b) As used in this section—
>
> (1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his

> family or of anyone in his company at the time of the taking or obtaining.
>
> (2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.
>
> (3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

* * * * *

STATEMENT

Following a jury trial in the United States District Court for the Northern District of California, respondent was convicted of attempted bank robbery, in violation of 18 U.S.C. 2113(a), and attempted obstruction of commerce by extortion and threats of violence, in violation of the Hobbs Act, 18 U.S.C. 1951. He was sentenced to four years' imprisonment. The court of appeals reversed, one judge concurring in part and dissenting in part (Pet. App. A).

1. The evidence at trial showed that in March 1975 respondent and an accomplice, Ted Houser, devised a plan to extort $100,000 from the Bank of Marin in San Rafael, California, by means of threats to the

bank president (Tr. 48–51). The bank, which is insured by the Federal Deposit Insurance Corporation, holds "three or four million dollars" of municipal bonds issued in states other than California, and conducts business with out-of-state depositors and borrowers (A. 3–4; Tr. 25–27, 408).

When the FBI learned of the plan through an informant, agents warned the bank's president, William Murray (Tr. 27, 48–52). On April 11, 1975, agents advised Murray that the extortion attempt was imminent and provided him with a package of false currency and a device to record any telephone threats (Tr. 20–23, 30–34, 51–52).

Shortly before noon on April 11, 1975, respondent and Houser were observed, first in a car parked in the vicinity of the bank (Tr. 149–150, 192–193), then following Murray's car when he drove to a lunch appointment (Tr. 153–154). While Murray was at the luncheon meeting, the agents saw respondent and Houser leave their car and stand at the front of Murray's car (Tr. 156–157, 198–199). When Murray returned to the bank, respondent and Houser followed (Tr. 91–92, 129–130). At about 4:00 p.m. Houser telephoned Murray (who recorded the conversation) and told him that remote-controlled bombs had been placed both at the bank and at Murray's home. Houser instructed Murray to remove $100,000 from the bank vault, take it to his car, and then follow the instructions he would find attached to the front bumper. Houser threatened that if his instructions were not followed the bombs would be detonated, "killing your wife and many others. If

you manage to foil this plan, the People's Liberation Army will declare war on your family, your wife and your children will be assassinated one by one" (Gov't. Ex. 1; Tr. 34–35, 347).

Murray put the false currency in a briefcase and went to his car, where he found a note that instructed him to drive to a parking lot in San Anselmo, drop the money behind a Goodwill box, and return to the bank (Tr. 35–39; Gov't. Exs. 2 and 3). Respondent's fingerprint was on this note (Tr. 238–245).

Murray followed the instructions and left the briefcase in the parking lot (Tr. 38–39, 205–207, 220–223). Moments before Murray arrived at the parking lot, government agents saw the automobile that respondent and Houser had used earlier drive slowly by and observed that one of its occupants was wearing clothes like those respondent had been seen wearing earlier (Tr. 194, 222–223). A few minutes after Murray left the briefcase, it was discovered by two boys, who opened it and tore open the packages of false currency (Tr. 206–208).

2. On appeal, the United States Attorney confessed error on the bank robbery count,[1] and a divided panel reversed respondent's conviction on the charge of attempted extortion. The majority opinion did not dispute that respondent's conduct constituted an at-

[1] The government agreed that 18 U.S.C. 2113(a) does not apply unless the taking of the bank's money is "from the person or presence of another," and that respondent's plan did not contemplate any trespass into the bank or a taking of the money from the person or presence of the bank manager. But see note 19, *infra*.

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tempted extortion of bank assets, and thus fell within the language of Section 1951; it nevertheless concluded, relying on the analysis of legislative intent in *United States* v. *Yokley,* 542 F. 2d 300 (C.A. 6), that conduct "must constitute 'racketeering' to be within the perimeters of the [Hobbs] Act" (Pet. App. 3a). The majority asserted that a contrary interpretation would "justify federal usurpation of virtually the entire criminal jurisdiction of the states" (*ibid.*).

Judge Carter dissented from the reversal of respondent's conviction for violation of the Hobbs Act. He pointed out that the "plain and unambiguous language" of the statute prohibits any attempted extortion that has the requisite effect on commerce, and neither the language nor the legislative history of the Act limits its coverage to "racketeering." He found it particularly inappropriate to refuse to apply the Hobbs Act in this case, which involved an industry essential to interstate commerce and one for which Congress has shown special concern (Pet. App. 4a–10a).

SUMMARY OF ARGUMENT

1. The plain language of the Hobbs Act, 18 U.S.C. 1951, which is the primary guide to its meaning, reaches "[*w*]*hoever* in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do" (emphasis supplied). This Court has previously construed this broad language as manifesting Congress's intent to exercise the full extent of its constitutional authority

to punish interference with interstate commerce by robbery or extortion. *Stirone* v. *United States,* 361 U.S. 212, 215. The Act is not limited to—and does not even mention—"racketeering." It thus explicitly proscribes respondent's conduct—the attempted extortion of $100,000 from a federally insured bank—and requires no additional showing that the conduct constituted "racketeering."

2. The legislative history provides no support for the novel construction of the Act adopted by the Sixth Circuit in *United States* v. *Yokley,* 542 F. 2d 300, and followed by the court of appeals in the instant case. The history of the Act of June 18, 1934, 48 Stat. 979, the predecessor to the Hobbs Act, demonstrates that although the investigation that led its passage was the outgrowth of congressional concern regarding gangsters such as Dillinger and so-called "racketeering," the bill proposed and enacted was intended to protect interstate commerce against *all* interference resulting from the actual or threatened use of force, violence, or coercion. Like the Hobbs Act, the 1934 Act was broadly drafted to reach "[*a*]*ny* person who, in connection with or in relation to *any* act in *any* way or in *any* degree affecting trade or commerce * * *" *(emphasis supplied), obtains or attempts to obtain the property of another by use of or threat to use "force, violence, or coercion" (Section 2, 48 Stat. 979–980).

Certainly the fact that the 1934 Act was proposed by the Copeland Committee, which had been authorized to investigate "kidnaping, racketeering, and

other forms of crime" (78 Cong. Rec. 448 (1934)), cannot justify the conclusion that each of the 90 or so bills it proposed was intended to reach only so-called "racketeering" and not all the conduct actually described by the statutory language. Indeed, since the Copeland Committee recognized that the term "racketeering" was being loosely used to describe conduct ranging from violent to fraudulent to merely unpopular, and it found a working definition of the term essential to guide its investigation, it is inconceivable that the Committee would nevertheless attempt to make "racketeering" an element of a criminal offense without defining it.

The 1934 Act was replaced by the Hobbs Act, which was adopted in response to the Supreme Court's construction of the 1934 Act as exempting certain strong arm labor tactics. As with the 1934 Act, neither Committee report suggests any intention to limit the broad language employed in the Act, and the debates make this point even clearer, if possible, reiterating the theme that the Act applies to any person who commits robbery or extortion that obstructs interstate commerce.

The debates also focused on the fact that the crimes of robbery and extortion established in the Act were already punishable under state law. The Act was vigorously opposed as an unwarranted incursion into the policing powers of the states. The proponents agreed that state law already prohibited the conduct proscribed by the Hobbs Act, but they argued that the Act was nevertheless necessary because local enforcement had often proved insufficient to protect interstate commerce. This argument carried the day.

3. Even apart from the legislative history of the Hobbs Act, the court below also concluded that its limiting construction of the Act was necessary to prevent what it viewed as an unwarranted federal usurpation of state criminal jurisdiction. As noted above, however, the debates reflect full congressional awareness that the Hobbs Act proscribed conduct already made criminal by the states, and that Congress nevertheless passed an Act intended to be as broad as Congress's power over interstate commerce. This is not a case in which this Court is being asked to assume or infer that Congress intended to alter the balance of federal-state criminal jurisdiction, but one in which Congress clearly and unmistakeably stated its intent.

In any event, requiring proof of "racketeering" would not serve the purpose of screening out cases in which there is no substantial federal interest. Although the court of appeals did not define "racketeering"—and we can think of no reasonable definition of the term that would exclude respondent's conduct—there is nothing inherent in the concept that suggests that "racketeers" prey only upon persons or businesses heavily engaged in interstate commerce. In fact, the ineffectiveness of the court's construction of the Act as a means of distinguishing between valid and invalid exercises of federal power is highlighted by the result it reached in this very case, which precludes the federal government from prosecuting an

attempt to extort a large sum of money from a bank, one of the major elements of the national commercial structure.

Finally, the judicial creation of an element of "racketeering" in the Hobbs Act should be abjured because the vagueness of the "racketeering" concept would raise grave doubts about the constitutionality of the statute. See *United States* v. *Fabrizio,* 385 U.S. 263; *Lanzetta* v. *New Jersey,* 306 U.S. 451. Where Congress chooses to make "racketeering" an element of a criminal offense, as it did in the Anti-Racketeering Statute (18 U.S.C. 1961 *et seq.*), it may surely be expected, and probably is obliged, to supply a definition of the concept (respondent's conduct would, incidentally, be considered "racketeering" under the definition contained in 18 U.S.C. 1961(1)).

ARGUMENT

EXTORTION AFFECTING INTERSTATE COMMERCE VIOLATES THE HOBBS ACT WHETHER OR NOT IT ALSO CONSTITUTES "RACKETEERING"

A. THE LANGUAGE OF THE HOBBS ACT UNAMBIGUOUSLY COVERS ANY EXTORTION HAVING THE REQUIRED EFFECT ON COMMERCE

From *United States* v. *Wiltberger,* 5 Wheat. 76 (1820), through *Scarborough* v. *United States,* No. 75–1344, decided June 6, 1977, slip op. 6, this Court has recognized that the first guide to the application of a statute is its text. This settled rule of construction is based on the sensible proposition that the best indication of what Congress means is what it says. Where "there is no ambiguity in the words of [the

statute] * * * there is no justification for indulging in uneasy statutory construction." *Barrett* v. *United States,* 423 U.S. 212, 217. Legislative history cannot "be relied upon to * * * add unspecified conditions to statutory language which is perfectly clear." *Pipefitters* v. *United States,* 407 U.S. 385, 446 (Powell, J., dissenting).

The Hobbs Act is not explicitly limited to—and indeed it does not even mention—"racketeering." Instead, it reaches "[*w*]*hoever* in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do * * *." 18 U.S.C. 1951(a) (emphasis supplied). Accordingly, this Court has previously recognized that "there are two essential elements of a Hobbs Act crime: interference with commerce, and extortion." *Stirone* v. *United States,* 361 U.S. 212, 218. As this Court stated in *Stirone, supra,* 361 U.S. at 215, the Act "speaks in broad language, manifesting a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery or physical violence." [2]

The Act contains no qualifying words that might exempt persons whose extortionate schemes may not

[2] The use of the phrase "affects commerce" in itself provides a substantial basis for this proposition. "Congress is aware of the 'distinction between legislation limited to activities "in commerce" and an assertion of its full Commerce Clause power so as to cover all activity substantially affecting interstate commerce.'" *Scarborough* v. *United States,* No. 75–1344, decided June 6, 1977, slip op. 8.

amount to "racketeering." Indeed, it is difficult to envision language that would be more encompassing than the word "whoever" used in the Hobbs Act, or what language would be necessary in order to punish all extortion affecting commerce if this language is not sufficient to do so.[3]

Thus the broad and unqualified language of the statute explicitly proscribes respondent's conduct—the attempted extortion of $100,000 from a federally insured bank engaged in interstate commerce—and requires no additional showing that the conduct constituted "racketeering."

B. THE COURTS HAVE CONSISTENTLY ACCORDED THE HOBBS ACT THE BROAD COVERAGE ITS LANGUAGE PRESCRIBES, AND HAVE REJECTED THE "RACKETEERING" LIMITATION IMPOSED BELOW

In more than 30 years since the passage of the Hobbs Act, the ruling below and the Sixth Circuit's decision in *United States* v. *Yokley,* 542 F. 2d 300, stand alone in holding that conduct clearly within the plain language of the Hobbs Act is nonetheless not proscribed by the Act unless it is also proven to constitute "racketeering." Other courts of appeals' decisions have been consistent with this Court's observation in *Stirone* that the "broad language" of the Act manifests "a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery or

[3] When Congress wished to make "racketeering" an element of a criminal offense, it knew how to say so and also was careful to supply a definition for that amorphous concept. See 18 U.S.C. 1961 *et seq.*

physical violence" (361 U.S. at 215). For example, the Seventh Circuit reasoned as follows in *United States* v. *Staszcuk,* 517 F. 2d 53, 58 (*en banc*), certiorari denied, 423 U.S. 837:

> Like the Sherman Act, which is broadly directed against private regulation of the free market, and which has been construed as an exercise by Congress of "all the power it possessed" to prevent restraints on commercial competition, * * * the purpose of the Hobbs Act parallels the central purpose of the Commerce Clause itself.
>
> * * * * *
>
> The primary purpose of the Commerce Clause was to secure freedom of trade, to break down the barriers to its free flow, and to curtail the rising volume of restraints upon commerce that the Articles of Confederation were inadequate to control. A statute which has a purpose which so unambiguously parallels the fundamental purpose of its constitutional predicate must receive an expansive construction.
>
> It is, therefore, not surprising to find that the language of the statute, its legislative history, and its interpretation by the Supreme Court all confirm an intent by Congress to exercise its full powers under the Commerce Clause.

In *United States* v. *Brecht,* 540 F.2d 45, 52 (C.A. 2), the Second Circuit focused on the Act's broad definition of extortion and concluded:

> Since Congress has not limited the scope of extortion save for the statutory definition itself,

> we can formulate no judicial rule that would draw a practical line between one type of extortion that is covered by the Hobbs Act and another type which is not. Moreover, we cannot require, as an element of the offense, the presence of at least two individuals as evidencing the participation of organized crime, for the Hobbs Act definition of extortion is not limited to the crime of conspiracy to extort but deals with the substantive offense which can be committed by a single individual.

Following similar reasoning, the courts of appeals for the Second, Eighth, and Tenth Circuits have each within the past few months expressly rejected the contention that the Hobbs Act reaches, not all extortion or robbery with the requisite effect on interstate commerce, but rather some narrower class of activities constituting "racketeering."

For example, in *United States* v. *Frazier,* 560 F.2d 884, 886 (C.A. 8), petition for a writ of certiorari pending, No. 77–487, which involved facts nearly identical to those in the instant case,[4] the Eighth Circuit expressly refused to follow *Culbert,* concluding "that the Hobbs Act means what it says" and being "unpersuaded that anything in the legislative history of the Act requires a more restrictive interpretation." The Second Circuit found the argument that "activities must amount to 'racketeering' before a Hobbs Act violation can be established * * * totally without

[4] Frazier, like petitioner, attempted to extort money from a federally insured bank by means of threats to blow up a bank employee or his family. *Frazier* reaffirmed the analysis in *United States* v. *Golay,* 560 F. 2d 866, 868 (C.A. 8).

merit." *United States* v. *Daley,* C.A. 2, No. 77–1262, decided October 20, 1977, slip op. 117. The Tenth Circuit likewise rejected this contention, reaffirming without extended discussion its prior decisions holding that the Hobbs Act "proscribes all forms of extortion affecting interstate commerce." *United States* v. *Warledo,* 557 F. 2d 721, 730 (C.A. 10).

C. THE LEGISLATIVE HISTORY OF THE HOBBS ACT SUPPORTS ITS COMPREHENSIVE LANGUAGE AND DEMONSTRATES NO INTENTION ON THE PART OF CONGRESS TO REQUIRE PROOF OF RACKETEERING

The legislative history of the Hobbs Act fully supports the view that Congress intended this broadly worded statute to apply to all extortion or robbery affecting interstate commerce, rather than only to some more limited class of activities constituting "racketeering."

1. Since the Hobbs Act was, in effect, a broadening amendment to the Act of June 18, 1934, 48 Stat. 979, the analysis of the legislative history of the Hobbs Act properly begins with its predecessor.

The history of the 1934 Act[5] demonstrates that although the investigation that led to the passage of this Act (as well as at least 10 other anti-crime stat-

[5] The 1934 Act was introduced as S. 2248 (73d Cong., 2d Sess.) on January 11, 1934, together with a number of other anti-crime bills. 78 Cong. Rec. 409, 448–460 (1934). It was reported from the Judiciary Committee on March 22, 1934, and passed the Senate on March 29, 1934, without debate. 78 Cong. Rec. 5082, 5734–5735 (1934). On June 13, 1934, the House passed the measure, as amended, without substantial debate. 78 Cong. Rec. 11402–11403 (1934). On the next day the Senate concurred in the House amendment, and on June 18, 1934, it was signed into law. 78 Cong. Rec. 11482, 12451 (1934).

utes) was the outgrowth of congressional concern regarding the activities of gangsters such as Dillinger and so-called "racketeering," the bill proposed and enacted was broadly drafted to protect interstate commerce against all interference resulting from the actual or threatened use of force, violence, and coercion.

The 1934 Act was officially titled "An Act to protect trade and commerce against interference by violence, threats, coercion, or intimidation." Like the Hobbs Act, the 1934 Act was drafted in broad terms to reach, *inter alia*, "[a]ny person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce * * *," obtains or attempts to obtain the property of another by the use of or threat to use "force, violence, or coercion."[6] The word "any"—the broadest available—recurs four

[6] Section 2 of the 1934 Act provided (48 Stat. 979–980):

"Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—

"(a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, not including, however, the payment of wages by a bona-fide employer to a bona-fide employee; or

"(b) Obtains the property of another, with his consent, induced by wrongful use of force or fear, or under color of official right; or

"(c) Commits or threatens to commit an act of physical violence or physical injury to a person or property in furtherance of a plan or purpose to violate sections (a) or (b); or

times in the brief paragraph describing the reach of the Act's proscription.

The Senate Judiciary Committee recommended passage of the Act on the ground that the Sherman Antitrust Act was "not well suited for prosecution of persons who commit acts of violence, intimidation, and extortion." S. Rep. No. 532, 73d Cong., 2d Sess. 1 (1934); see also H.R. Rep. No. 1833, 73d Cong., 2d Sess. 2 (1934). The Judiciary Committee described the bill's purpose as to (S. Rep. No. 532, *supra*, at 1; emphasis added)

> extend Federal jurisdiction over *all* restraints of any commerce within the scope of the Federal Government's constitutional powers. Such restraints, if accompanied by extortion, violence, coercion, or intimidation, are made felonies, *whether the restraints are in form of conspiracies or not.*

Although the history of the adoption of the Act shows it to be an outgrowth of investigations directed in large part at various activities described as "racketeering," it offers no support for the view that Congress did not intend the Act to apply to all the activities falling within its express terms, but rather only to some narrower class of activities constituting "racketeering."

"(d) Conspires or acts concertedly with any other person or persons to commit any of the foregoing acts; shall, upon conviction thereof, be guilty of a felony and shall be punished by imprisonment from one to ten years or by a fine of $10,000, or both."

The 1934 Act was proposed by the Copeland Committee, a subcommittee of the Senate Commerce Committee that had been authorized to investigate "the subjects of kidnaping, racketeering, and other forms of crime" (78 Cong. Rec. 448 (1934)) during what the Committee described as a "crime wave of proportions never before known." S. Rep. No. 1189, 75th Cong., 1st Sess. 38 (1937). In 1934 the Committee proposed some 90 bills, including the 1934 Act, all of which it described as aimed at making more difficult "the activities of predatory criminal gangs of the Kelly and Dillinger types." S. Rep. No. 1440, 73d Cong., 2d Sess. 1–2 (1934).

Certainly neither the fact that the Committee had initially been chartered to investigate "racketeering" nor its concern with "predatory criminal gangs" supports the conclusion that all of the legislation that it proposed—including the 1934 Act—was intended to reach only a narrow class of activities constituting "racketeering" rather than the activities actually described in the statutory language. Indeed, the range of the legislation that resulted from the work of the Committee rebuts any such inference.[7]

[7] In addition to the 1934 Act, the Committee's work resulted in the passage of the legislative forerunners of the following present criminal statutes, all now codified in Title 18 of the United States Code: Section 875 (interstate transmission of extortionate communications, etc.); Section 1073 (interstate flight to avoid prosecution or giving testimony); Section 1114 (protection of federal officers in performance of official duty); Section 1201 (federal kidnaping statute); Section 1792 (mutiny or riot in federal penal institution); Section 2113 (federal bank robbery statute); Section 2314 (interstate transportation of stolen property); and Section 2315 (sale or receipt of stolen property with interstate origin). See S. Rep. No. 1440, *supra*, at 1–6. Like the 1934 Act, none of these bills was expressly limited to "racketeering."

Moreover, since the Copeland Committee had found (S. Rep. No. 1189, *supra*, at 2) that "racket" and "racketeering" were terms that "ha[d] for some time been used loosely to designate every conceivable sort of practice or activity which was either questionable, unmoral, fraudulent, or even disliked, whether criminal or not," it is inconceivable that it would nevertheless attempt to make "racketeering" an element of any criminal offense without defining it. Indeed, for the purposes of its investigation the Committee adopted what it described as a "working definition" of "racketeering" as "an organized conspiracy to commit the crimes of extortion or coercion" (*id.* at 3; emphasis added):

> *Racketeering is an organized conspiracy to commit the crimes of extortion or coercion, or attempts to commit extortion or coercion, within the definition of these crimes found in the penal law of the State of New York and other jurisdictions.* Racketeering, from the standpoint of extortion, is the obtaining of money or property from another with his consent, induced by the wrongful use of force or fear. The fear which constitutes the legally necessary element in extortion is induced by oral or written threats to do an unlawful injury to the property of the threatened person by means of explosives, fire, or otherwise; and to kill, kid-

nap, or injure him or a relative of his or some member of his family.

Racketeering from the standpoint of coercion usually takes the form of compelling, by use of similar threats to person or property, a person to do or abstain from doing an act which such other person had the legal right to do or abstain from doing, such as joining a so-called protective association to protect his right to conduct a business or trade. Coercion as such does not necessarily involve the payment of money, but frequently both extortion and coercion are involved in racketeering.

Although the Committee's working definition appears to have strongly influenced the drafting of the 1934 Act, as the Senate Judiciary Committee noted, the Act omitted any requirement of proof of a conspiracy, a central element of the Copeland Committee's working definition. S. Rep. No. 532, *supra,* at 1.

The references in the House and Senate reports to concern regarding "racketeering" and the federal attempts to suppress "so-called 'racketeering' " likewise demonstrate no intent to impose some unstated restriction on the application of the Act. In fact, neither committee attempted to define "racketeers" or "racketeering," nor do their reports reflect any indication that the bill contained an unstated limitation to only "gangsters," or to some undefined class of "racketeers."

In contrast, the reports specifically noted that because "ordinary business practices" and particularly the "legitimate activities" of employers and employees were not within the purposes of the Act, they

had been excluded (*id.* at 2; H.R. Rep. No. 1833, *supra,* at 2). This exclusion was made explicit in the wording of the Act and was explained in the reports.[8]

2. The 1934 Act was replaced by the Hobbs Act, which was adopted in direct response to the Supreme Court's construction of the 1934 Act as exempting certain strong-arm labor tactics from federal prosecution.[9] See *United States* v. *Enmons,* 410 U.S. 396; *United States* v. *Green,* 350 U.S. 415, 418–419.

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[8] The Senate Report (quoting a memorandum from the Department of Justice) stated: "The provisions of the proposed statute are limited so as not to include the usual activities of capitalistic combinations, bona fide labor unions, and ordinary business practices which are not accompanied by manifestations of racketeering." S. Rep. No. 532, *supra,* at 2. The House Report quoted a letter from the Attorney General that "the typical racketeering activities affecting interstate commerce," those "in connection with price fixing and economic extortion directed by professional gangsters," were incorporated in Sections 2(a) and (b) of the Act, whereas "legitimate and bona fide activities of employers and employees" were "definitely exclude[d]." H.R. Rep. No. 1833, *supra,* at 2.

Both comments refer to the provision in Section 2(a) of the Act excepting "the payment of wages by a bona-fide employer to a bona-fide employee," and to Section 6 regarding the activities of labor organizations. See pp. 28–30, *infra,* and notes 16 and 17.

[9] In *United States* v. *Local 807,* 315 U.S. 521, this Court construed Section 2(a) of the 1934 Act, which provided exemption for "the payment of wages by a bona-fide employer to a bona-fide employee," as excluding from the coverage of the statute the activities of New York City teamsters who would lie in wait for out-of-town truckers and then coerce payment for the unwanted and superfluous service of driving the trucks within the city, whether or not the service was supplied. The principal objective of the Hobbs Act was "to prevent a recurrence of what happened in the Supreme Court opinion [in *Local 807*]." 91 Cong. Rec. 11919 (1945) (remarks of Congressman LaFollette); see also *id.* at 11847 (remarks of Congressman Lane); 89 Cong. Rec. 3202 (1943) (remarks of Congressman Walter).

As with the 1934 Act, neither committee report on the Hobbs Act contains the slightest suggestion of any intention to limit the broad language employed in the Act. For example, the Senate Committee on the Judiciary stated (S. Rep. No. 1516, 79th Cong., 2d Sess. 1 (1946)):

> The purpose of this bill is to prevent interference with interstate commerce by robbery or extortion, as defined in the bill. Title I of this bill is an amendment of the existing law which was enacted in 1934. The objective of the amendments is to prevent anyone from obstructing, delaying, or affecting commerce, or the movement of any article or commodity in commerce by robbery or extortion.
>
> A conspiracy or attempt to do anything in violation of section 2, title I, is likewise made punishable, as is the commission or threat of physical violence to any person or property in furtherance of a plan to violate section 2.[10]

[10] The House Judiciary Committee report described the bill in equally expansive terms (H.R. Rep. No. 238, 79th Cong., 1st Sess. 9 (1945)): "The objective of title I is to prevent anyone from obstructing, delaying, or affecting commerce, or the movement of any article or commodity in commerce by robbery or extortion as defined in the bill. A conspiracy or attempt to do anything in violation of section 2 is likewise made punishable, as is the commission or threat of physical violence to any person or property in furtherance of a plan to violate section 2."

The report concluded with the observation (*id.* at 10):

"The Congress does not need to be reminded that the Constitution of the United States confers on it the exclusive and unlimites

The debates make it even clearer, if that is possible, that no "racketeering" limitation was intended. Because the Hobbs Act was clearly designed to reverse the construction of the 1934 Act as exempting certain labor tactics, the primary concern discussed during the debates was whether the bill constituted an attack on organized labor.[11] In response, the proponents of the bill stressed that it applied broadly to all acts of robbery and extortion affecting interstate commerce. Congressman Hobbs, whose views as the Act's sponsor are entitled to substantial weight (*United States* v. *Mine Workers*, 330 U.S. 258, 279–280), stated (89 Cong. Rec. 3217 (1943)):[12]

[*sic*] power to regulate interstate commerce. A necessary concomitant of this power is the high duty to protect interstate commerce in the interest of all the people. * * *

* * * * *

"* * * [T]here must be agreement that those persons who have been impeding interstate commerce and levying tribute from free-born American citizens engaged in interstate commerce shall not be permitted to continue such practices without a sincere attempt on the part of Congress to do its duty of protecting interstate commerce."

[11] See *e.g.*, 91 Cong. Rec. 11848 (1945) (remarks of Congressman Lane); 91 Cong. Rec. 11901 (1945) (remarks of Congressman Celler); 89 Cong. Rec. 3201 (1943) (remarks of Congressman Celler); 89 Cong. Rec. 3207 (1943) (remarks of Congressman O'Hara).

[12] References in this brief to statements in Volume 89 of the Congressional Record pertain to the debate on the original bill introduced by Congressman Hobbs (H.R. 653) in the 1st Session of the 78th Congress (1943). This bill passed only the House. The provisions of H.R. 32, 79th Cong., 1st Sess. (1945), which became the Hobbs Act, substantially carried forward the operative language of the original bill. This Court recognized in *United States* v. *Enmons*, *supra*, 410 U.S. at 404–405, n. 14, that the remarks in Con-

> This bill is grounded on the bedrock principle that crime is crime, no matter who commits it; and that robbery is robbery and extortion extortion * * *. It covers whoever in any way or degree interferes with interstate or foreign commerce by robbery or extortion.

Many other supporters of the bill echoed this broad view. Congressman Vursell stated simply that "this act seeks to do only one thing—to strengthen the law against robbery and extortion. You can't read anything more into it." 91 Cong. Rec. 11908–11909 (1945). And Congressman Gwynne observed that "[t]his bill simply would protect interstate commerce from robbery and extortion, *no matter by whom these crimes were committed.*" *Id.* at 11904 (emphasis supplied)."[13]

It is true that the debates include many references to "racketeers," particularly in the labor unions, as well as to "labor goons" and "gangsters" (see, *e.g.*, 91 Cong. Rec. 11841, 11906, 11909–11910 (remarks of Congressmen Cox, Robsion, and Sumners)), but nowhere is there any suggestion that the bill would apply

gress with respect to the original bill "are wholly relevant to an understanding" of the statute.

[13] The same point was echoed by a number of other proponents of the legislation. Congressman Springer stated: "We must further remember that this bill applies to every citizen under the American flag, whoever he may be, wherever he may live or to whatever organization he may belong." 91 Cong. Rec. 11911 (1945); see also, 89 Cong. Rec. 3212 (1943). Congressman Hancock likewise stated: [This Act] is directed against robbery and extortion when used to obstruct the free flow of goods in interstate commerce, no matter who the offenders may be." 89 Cong. Rec. 3210 (1943). See also the remarks of Congressman Fellows and Jennings. 89 Cong. Rec. 3206, 3211 (1943).

only to persons who could be classed as goons, gangsters, or racketeers. Nor was "racketeering" proposed as an element of the Hobbs Act; to the contrary, when Congressman Gwynne enumerated "what a prosecutor would need to allege and prove to get [a] conviction,"[14] he made no mention of racketeering.

Indeed, the comments of Congressman Hobbs underscore the fact that, in view of the Supreme Court's construction of the 1934 Act, special care had been taken to state Congress's intent explicitly (91 Cong. Rec. 11912 (1945)):

> We wiped the whole [Copeland Act] out and substituted a bill that cannot be misunderstood. * * * [I]t is so clearly expressed that it will do the job it is meant to do, which is to prevent interference with interstate commerce by robbery or extortion. That is all we are shooting at. Those words have been construed a thousand times by the courts. Everybody knows what they mean.
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> * * * * *
>
> * * * [C]rime is crime, no matter who commits it. Robbery is robbery and extortion is extortion, whether or not the perpetrator has a union card in his pocket.

[14] Congressman Gwynne stated (91 Cong. Rec. 11903 (1945)): "First, they would need to prove that the activity complained of in some way affected interstate commerce; second, they would have to prove that there was an actual, not a theoretical, taking of personal property; third, they would have to prove that the taking was by violence, by personal violence, or by actual threats of personal violence; and then, fourth, they would have to prove that the acts done—they might be violent, they might take something, but the Government would have to prove in addition that the acts done did not come within the exceptions set out in title III."

The debates on the Hobbs Act also focused on the fact that the crimes of robbery and extortion established by the Hobbs Act were already punishable under state law; indeed, the definitions of robbery and extortion were derived from the New York criminal code. See 91 Cong. Rec. 11843, 11900 (1945) (remarks of Congressmen Michener and Hancock). Opponents of the bill pointed out that each state had criminal laws that should be adequate to deal with robbery and extortion, and that convictions should be easier to obtain under state law, since no effect on commerce need be shown. 91 Cong. Rec. 11903, 11913 (1945) (remarks of Congressmen Welch and Resa). Opponents objected that the "purpose [of the bill] is to have the Federal Government assume the policing power that belongs to the respective States"; they urged that "this is not a Federal Government function," but rather "another instance of objectionable duplication by the Federal Government of the functions and activities of the States." 91 Cong. Rec. 11922, 11903, 11913 (1945) (remarks of Congressmen Lemke, Welch, Resa).

The proponents of the bill repeatedly acknowledged that there were applicable state laws but urged the adoption of the bill because local enforcement had not been adequate to protect interstate commerce. For example, Congressman Michener stated that there were state laws which could be "adequate," but were not enforced by local officers; he concluded (91 Cong. Rec. 11843 (1945)):

> Every State in the Union * * * should enforce its laws. However, if interstate commerce is being interfered with, * * * then it seems clear that it is the obligation of the Congress to furnish national protection in these interstate operations.

In response to the question whether there were any states without laws dealing with the conduct covered by the Hobbs Act, Congressman Sumners, the Chairman of the Judiciary Committee, answered that the states had such laws, but some states did not "do their duty" to enforce these laws. He responded directly to the states' rights argument as follows (91 Cong. Rec. 11910 (1945)):

> I am not opposed to States' rights, but I am not willing to go so far in supporting States' rights that gangsters of one State may rob citizens of another State engaged in interstate commerce. Do States' rights include that? * * *
>
> * * * * *
>
> It is a poor time to stand up for States' rights on the side of a bunch of gangsters like this.

See also 89 Cong. Rec. 3217–3218 (1943) (remarks of Congressman Hobbs). In the face of this history, it is not sustainable to depart from normal principles of statutory construction in order to avoid what some individual judges may think to be undue overlap between the Hobbs Act and state criminal enforcement activities.

3. The legislative history thus provides no support for the narrow reading given to the Act by the Sixth Circuit in *United States* v. *Yokley,* 542 F. 2d 300, and followed without further analysis by the majority of

the court of appeals in this case. The *Yokley* court relied upon the fact that the Copeland Committee, which proposed the 1934 Act, was charged with investigating "rackets" and had stated that the bills it proposed would render more difficult the activity of "predatory criminal gangs" of the "Dillinger type." However, as noted above, the Copeland Committee proposed bills on subjects ranging from kidnaping and mutiny in a federal penal institution to interstate transportation of stolen property and interstate flight to avoid prosecution or giving testimony (see note 7, *supra*). None of these bills contained any explicit limitation to "racketeering," and until *Yokley* none had been interpreted as nevertheless requiring a showing of "racketeering." The *Yokley* court also found the emphasis in the debates on the Hobbs Act regarding the need to eliminate "racketeering" persuasive. 542 F. 2d at 303. However, the debates clearly established that, despite Congress' concern with "racketeers," "gangsters" and "labor goons," the bill was intended to apply equally to any person guilty of robbery or extortion affecting interstate commerce.

Finally, the *Yokley* court stated that the Senate Judiciary Committee report [15] had recommended passage of the 1934 Act "as a means for 'prosecution of racketeers' " and that "the report indicated that practices 'not accompanied by manifestations of racketeering' were outside the scope of the Act." 542 F. 2d at 303.

[15] Although the court cited "S. Rep. No. 1833," the quoted language is taken from S. Rep. No. 532, *supra*.

The Committee indeed viewed acts of extortion, violence, coercion, and intimidation such as those of respondent as "manifestations of racketeering," and it responded by making the "manifestations" federal offenses when they affected interstate commerce. But its prohibition extended to "whoever" engaged in acts constituting such "manifestations"; there is not one iota of support for the notion that the 1934 Act—and, by inheritance, the Hobbs Act—exempted persons who committed acts constituting "manifestations of racketeering" if they were not also shown to have done them in the capacity of "racketeers."

Moreover, we think the *Yokley* court misread the "manifestations of racketeering" language by considering it out of its context.[16] The language appeared in a portion of the report dealing with certain "bona fide" activities of labor unions and businesses that

[16] The Senate report described the inadequacy of the Sherman Act to deal with cases involving violence, intimidation and extortion, and stated (S. Rep. No. 532, *supra*, at 1): "The accompanying proposed statute is designed to avoid many of the embarrassing limitations in the wording and interpretation of the Sherman Act, and to extend Federal jurisdiction over all restraints of any commerce within the scope of the Federal Government's constitutional powers. Such restraints if accompanied by extortion, violence, coercion, or intimidation, are made felonies, whether the restraints are in form of conspiracies or not. The proposed statute also makes it a felony to do any act 'affecting' or 'burdening' such trade or commerce if accompanied by extortion, violence, coercion, or intimidation."

The portion of the report quoted in part by the *Yokley* court then states (*id.* at 2): "The provisions of the proposed statute are limited so as not to include the usual activities of capitalistic combinations, bona fide labor unions, and ordinary business practices which are not accompanied by manifestations of racketeering."

were expressly excepted from the reach of the statute.[17] Thus, it was intended to illuminate a specific and narrow area that the Act would not reach rather than to reflect an additional element of the offense not alluded to in the language of the statute itself. In any event, the principal purpose of the Hobbs Act was to eliminate the exception that the 1934 Act had contained; accordingly, the Hobbs Act cannot fairly be construed by reference to the explanation given in 1934 for a provision Congress excised in 1946.

The *Yokley* court also grounded its decision on *United States* v. *Enmons,* 410 U.S. 396, which the Sixth Circuit construed as holding that "alleged illegal activity which was within the literal language of the statute was not within the Congressional intent" (542 F. 2d at 303). However, this Court specifically found that the conduct at issue in *Enmons* (the use of violence to achieve legitimate union objectives, such as higher wages for genuine services the employer sought) was not within the language of the Act. 410 U.S. at 399–400 and n. 3.[18]

[17] Section 2(a) of the Act (48 Stat. 980) exempts "the payment of wages by a bona-fide employer to a bona-fide employee" from the prohibition on the use or threat to use force, violence, or coercion to obtain the payment of money. Section 6 (48 Stat. 980) provided that the Act was not to be construed to affect "the rights of bona-fide labor organizations in lawfully carrying out [their] legitimate objects." The version of S. 2248 initially introduced (78 Cong. Rec. 457–458 (1934)) employed slightly different language; Section 2(3) prohibited, *inter alia,* coercion or attempted coercion of any person to make any payments "to any person, association, firm, corporation, or group, except for a bona-fide consideration."

[18] Extortion under the Hobbs Act requires, in substance, that property be obtained from another, with his consent, through the "wrongful" use of force or threats, or under color of official right.

In *Enmons,* since the conduct alleged did not fall within the language of the Act, and the legislative history contained conflicting statements, the Court applied the principles of lenity in construing criminal statutes and caution where the federal-state balance is implicated. But as this Court reemphasized most recently in *Scarborough* v. *United States,* No. 75–1344, decided June 6, 1977, slip op. 14, these principles are applicable only in cases where, even after a review of the legislative history, the statute remains ambiguous. Here, as we have shown above, extortionate conduct affecting commerce clearly falls within the broad language of the Act, and the legislative history is entirely consistent with this language. *Enmons* thus provides no support for the view, never taken before *Yokley* and essential to its holding, that conduct clearly covered by the Act is nonetheless immune from its proscriptions.

D. CONCERN FOR THE FEDERAL-STATE BALANCE DOES NOT JUSTIFY THE ADDITION OF THE ELEMENT OF RACKETEERING, WHICH MAY RENDER THE ACT VOID FOR VAGUENESS

The court of appeals also concluded that, "apart from the legislative history" of the Hobbs Act, an interpretation of the Act limiting it to conduct constituting "racketeering" was necessary to prevent "federal usurpation of virtually the entire criminal

18 U.S.C. 1951(b)(2). The *Enmons* Court construed the term "wrongful" to refer to the ends sought by the extortionist, not the means used, and went on to hold the use of force by union members to achieve legitimate collective bargaining demands was not "wrongful" within the meaning of the statute.

jurisdiction of the states" (Pet. App. 3a–4a). The court did not suggest that Congress lacked the constitutional authority to prohibit the conduct proscribed by the Act, but instead held that "[c]onsiderations of federalism" militated against a conclusion that Congress had "intended to work such an extraordinary and unprecedented encroachment into the realm of state sovereignty" (*ibid*).

As our discussion of the debates preceding adoption of the Hobbs Act demonstrates (see pp. 25–27, (*supra*), Congress was well aware of the fact that the conduct it was making criminal was already punishable under state law. Opponents of the bill argued against it on the ground that it intruded into matters of local concern and invaded the rights of the states; the proponents of the bill agreed that the Act reached conduct also regulated by the states but contended that the passage of the Act was necessary to protect interstate commerce. The passage of the bill over these objections therefore indicates, as this Court stated in *Stirone, supra*, 361 U.S. at 215, that Congress intended to legislate as broadly as permitted by its power over interstate commerce.

This case is thus a far cry from one such as *Rewis* v. *United States,* 401 U.S. 808, 810, where this Court found that the absence of any discussion of the federal-state balance in the legislative history strongly suggested that Congress had not intended the Travel Act, 18 U.S.C. 1952, to transform relatively minor

state offenses into federal felonies. Although this Court has stated that it is reluctant to "assume" in construing an ambiguous statute that Congress has effected a significant change in the relation between federal and state criminal jurisdiction, *Bass* v. *United States,* 404 U.S. 336, 349, in this case no assumption is required, since the text of the Hobbs Act is unambiguous and the legislative history is fully consistent with the plain meaning of the text. Cf. *Scarborough* v. *United States, supra.* Accordingly, considerations of federal-state relations provide no justification for judicial restructuring of the Act to import the concept of "racketeering."

Moreover, this case surely does not represent "an extraordinary and unprecedented encroachment into the realm of state sovereignty" (Pet. App. 4a). The federal government has a compelling interest in prosecuting under its own laws an attempted extortion from a bank that it insures, that serves businesses in many states, and that is part of an industry that, perhaps more than any other, facilitates the flow of interstate commerce.[19] As Judge Carter

[19] The United States Attorney conceded, and the court below held, that respondent's attempted taking of bank assets by means of threats or violence did not come within 18 U.S.C. 2113 because, having directed that the money be left in a parking lot, he did not attempt to take the assets "from the person or presence of another." Although the United States Attorney's concession was not approved by the Solicitor General and does not represent the position of the Department of Justice on this question, Judge Carter correctly observed that the decision below, if undisturbed, might result in an ominous gap in the protection afforded the banking industry (Pet. App. 10a):

pointed out in his dissent, that interest is certainly no less significant than those safeguarded by a legion of federal criminal statutes whose enactment under the commerce power has not been thought to threaten undue interference with the criminal jurisdiction of the states.[20] Indeed, as the dissent also noted, Congress has shown special concern for protection of the banking industry by its enactment of the federal bank robbery statute, 18 U.S.C. 2113.

The fact that the Hobbs Act creates broad federal jurisdiction does not, of course, in any way disable the states from enforcing their own laws against extortion and robbery. No one has ever suggested that the Act preempts state law enforcement powers. Nor is there any evidence that the enforcement of the Act has actually impinged on the states' law enforcement prerogatives or resulted in a wholesale invasion of state sovereignty. Indeed, it is the policy of the Department of Justice to administer the Hobbs Act with a careful awareness of the appropriate bound-

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A successful extortionist, if not subject to prosecution under the Hobbs Act, could only be convicted of bank larceny under 18 U.S.C. § 2113(b), with the threats of violence going unpunished. * * * And one who unsuccessfully attempts extortion against bank property, as here, could not be prosecuted at all under any federal statute. I cannot believe Congress intended to have this glaring hole in our criminal law.

At least one court of appeals has reached a contrary conclusion regarding the scope of Section 2113. *Brinkley* v. *United States*, 560 F. 2d 871 (C.A. 8), certiorari denied, No. 77-5323, November 7, 1977.

[20] A list of these statutes is set forth in the dissenting opinion (Pet. App. 6a–7a, n. 1).

aries between the areas of respective state and federal interests.[21]

In any event, requiring proof of "racketeering" would not serve the purpose of screening out cases in which no substantial federal interest was present. Although the court of appeals did not define "racketeering," there is nothing inherent in the concept that suggests that "racketeers" would prey only upon individuals or businesses heavily involved in interstate activities or that the concept would otherwise meaningfully restrict Hobbs Act prosecutions to crimes in which the federal government may be thought to have a substantial rather than a slight interest. Indeed, the reversal of the conviction in the present case—in the

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[21] Guidance regarding Hobbs Act prosecutions is provided by the *United States Attorneys' Manual* (176). Title 9, Section 2.,133, as amended May 5, 1977, provides that the United States Attorney should consult the Criminal Division prior to instituting certain classes of Hobbs Act cases. Section 131.030, as amended May 5, 1977, provides, however, that with certain exceptions prior authorization is not necessary when there is evidence of actual or threatened force or violance.

The *Manual* also sets policy limitations for Hobbs Act prosecutions in robbery cases (Title 9, Section 131.110): "* * * As a matter of policy, the Department has restricted use of the robbery provisions of the Hobbs Act to cases which involve organized criminal activity or which are part of some wide-ranging scheme. The Government Regulations and Labor Section must be consulted before any action is taken in robbery cases under section 1951."

As the court correctly recognized in *United States* v. *Brecht*, 540 F. 2d 45, 52, n. 14 (C.A. 2), the desirability of bringing a particular prosecution under the Hobbs Act is a matter within the discretion of the Department of Justice, not the courts. Cf. *United States* v. *LeFœivre*, 507 F. 2d 1288, 1296 (C.A. 4); *United States* v. *Archer*, 486 F. 2d 670, 678 (C.A. 2).

face of the strong federal concern with the banking industry arising from its vital effect on interstate commerce—demonstrates that the requirement of proof of racketeering has little or nothing to do with concern for state sovereignity.

Moreover, neither the court in this case nor the *Yokley* court provided any definition of "racketeering." As the Copeland Committee itself recognized, the term is loosely used to refer to "every conceivable sort of practice or activity which [is] either questionable, unmoral, fraudulent, or even disliked, whether criminal or not." S. Rep. No. 1189, *supra,* at 2. And, although the working definition of "racketeering" adopted by the Committee for its own purposes clearly influenced the drafting of the 1934 Act, and subsequently the Hobbs Act, as noted above the Hobbs Act does not incorporate that definition, since it omits the element of conspiracy. See pp. 19–20, *supra.*

A more recent but related law, the Anti-Racketeering Statute, 18 U.S.C. 1961 *et seq.,* does contain a detailed definition of the term "racketeering activity," as any act or threat involving certain enumerated state felonies, including extortion, and any act which is indictable under a number of specified federal statutes, including the Hobbs Act. 18 U.S.C. 1961(1). It seems evident, however, that the court of appeals did not intend to incorporate that statutory standard, since respondent's conduct clearly constitutes a "racketeering activity" under that definition.

Indeed, although the Sixth Circuit in *United States* v. *Harding,* No. 77–5030, decided September 29, 1977,

stated that "[t]he concept of racketeering * * * has long been understood to include the obtaining of property under color of official right" (slip op. 13), at least one district court applying the court of appeals' decision in the instant case seems to have reached a contrary conclusion. In *United States* v. *Curran,* N.D. Cal., No. 77–186–RHS, decided May 18, 1977, appeal pending, C.A. 9, No. 77–2353, an indictment charging ten policemen with conspiracy to extort money by use of their official positions was dismissed by the district court for failure to allege facts constituting "racketeering."

The vagueness of the "racketeering" concept not only makes prosecution under the statute exceedingly difficult, but it could also render the Hobbs Act unconstitutionally vague. In *Lanzetta* v. *New Jersey,* 306 U.S. 451, the Court held a state statute making it a criminal offense to be a member of a "gang" void for vagueness because it failed to define "gang," a term with no meaning derivable from the common law, and a variety of meanings in historical and sociological writings. Similarly, in *United States* v. *Fabrizio,* 385 U.S. 263, this Court rejected the claim that a statute which by its terms reached "whoever" transported gambling paraphernalia in interstate commerce (18 U.S.C. 1953) was nevertheless restricted to persons connected with organized crime or participating in an illegal gambling or lottery enterprise, observing that a "statute limited without a clear definition of the covered group * * * might raise serious constitutional problems" (385 U.S. at 267). See also

United States v. *Campanale,* 518 F. 2d 352, 364 (C.A. 9), certiorari denied *sub nom. Matthews* v. *United States,* 423 U.S. 1050 ("if undefined, terms such as 'pattern of racketeering activity' would be unmanageable").

In short, the holding of the court below is not only at odds with the statutory language, the legislative history, and precedent, but it imposes a restriction on the use of the Hobbs Act which, as a practical matter, might well render the statute unenforceable.

Conclusion

For the above stated reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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